COLUMBIA LAW REVIEW.

Published monthly during the Academic Year by Columbia Law Students

SUBSCRIPTION PRICE, $2.00 PER ANNUM. 30 CENTS PER NUMBER.

The election to the Board of Editors of the COLUMBIA LAW REVIEW of William E. Baird, Bridgham Curtis and John W. Parks is announced.

NOTES.

ABSTRACTION OF SUBSURFACE WATER FROM ANOTHER'S LAND.—The right to have the water flowing in a well-defined natural stream —whether on the surface, or not—continue so to flow has long been recognized as one of the natural incidents of the ownership of land. A riparian proprietor may lawfully take from the stream as much water as he may need on his land for agricultural, domestic, or manufacturing purposes not inconsistent with a similar right in the owners of the land above and below. That the law of water courses is not applicable to water percolating underground was decided in the leading case of *Acton* v. *Blundell,* 12 M. & W., 324 (1843). The Court declared that one may appropriate water coming naturally upon his land, if its course be invisible and undefined, not only to the same extent, and for the same purposes as he would be entitled to use that flowing in a stream, but, in addition may intercept or

divert it entirely, if this be necessary to the ordinary use or improvement of his land even, though the result be the cutting off of the sources of his neighbor's well, or the withdrawal of water already collected therein. This case has been followed generally throughout the United States.

In *Chasemore* v. *Richards*, 7 H. L. C. 349 (1859), percolating water was appropriated to be sold to the inhabitants of a village. The plaintiff complained of the interception of the sources of his mill-stream, but the House of Lords refused to allow him to recover, holding that the right to take underground water is not dependent upon the purpose for which it is diverted, thus recognizing and extending the doctrine laid down in *Acton* v. *Blundell*. This view had been taken in Vermont in a case of malicious interception, *Chatfield* v. *Wilson*, 28 Vt., 49 (1855). In England the right to interfere with the course of surface water not confined in a stream had previously been declared to be absolute, *Broadbent* v. *Ramsbotham*, 11 Ex. 602 (1856).

While decisions affirming the right of a land owner to intercept percolating water before it reaches another's land are numerous, cases dealing with the withdrawal of such water from the land of another are scarcely to be found. It is held that by inducing percolation one may take water from his neighbor's well, *New River Co.* v. *Johnson*, 2 E. & E. 435, (1860); but not from his stream, *Canal Co.* v. *Shugar*, L. R. 6 Ch. 483 (1871). It is difficult to see on what principle this distinction can be made.

In a recent New York case, *Forbell* v. *City of New York*, 160 N. Y. 357 (1899), no interference with well or stream was charged. By means of powerful suction pumps erected in wells driven on its own property the defendant municipal corporation daily withdrew quantities of subsurface water from the plaintiff's land. The Court granted relief to the plaintiff on the ground that to be lawful the appropriation of underground water must be for purposes connected with the ordinary use or improvement of the land, thus repudiating the doctrine of *Chasemore* v. *Richards*, *supra*, and adopting the view expressed by Lord Wensleydale in that case. The decision seems to represent a logical development of the common law as laid down in *Acton* v. *Blundell*.

RIPARIAN PROPRIETORS; TAKING PRIVATE PROPERTY WITHOUT JUST COMPENSATION.—The U. S. Supreme Court on November 12, 1900, decided that to cut off a riparian owner from access to navigable waters was not taking private property without just compensation, *Scranton* v. *Wheeler*, 21 Sup. Rep. 48. The plaintiff owned land originally granted by U. S. patent and bounded by "the right bank of the Ste. Marie River," Michigan. A Government pier has been built in the river bed which entirely cuts off the plaintiff's access to the river. Even if the plaintiff owned the fee of the river bed, says HARLAN, J., he acquired the same subject to the right of the Government to improve navigation